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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,757	11/02/2001	Joseph D. Franko SR.	QAL-30	9068

32863 7590 02/07/2003

WALTER K. ROLOFF  
490 HARBOR COURT  
SHOREVIEW, MN 55126

EXAMINER

CARTER, MONICA SMITH

ART UNIT

PAPER NUMBER

3722

DATE MAILED: 02/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/005,757

Applicant(s)

FRANKO, JOSEPH D.

Examiner

Monica S. Carter

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

- ✓ 1. Applicant's election without traverse of claims 1-4 (Group I) in Paper No. 4 is acknowledged.
2. Claims 5 and 6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.

### *Drawings*

- ✓ 3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the crimp edge must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 1-4, there is an inconsistency between the language in the preamble and a certain portion or portions of the body of the claim, thereby making the scope of the claim indefinite and unclear. Applicant is required to clarify what subject matter the claim is intended to be drawn to, i.e., either the subcombination of extended text label alone or the combination of the extended text label and tube container, and that the language of the claim be amended to be consistent with this intent. For the purpose of prosecution, the examiner considers the subject matter to be drawn to the combination.

In claims 1-4, it is not clear what applicant considers to be the crimp edge of the label.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann (5,672,224) in view of O'Reilly et al. (5,373,966).

Kaufmann discloses an extended text label for a container (1) including a crimp edge (edge along 5).

Kaufmann disclose the claimed invention except for claimed structure of the container.

O'Reilly et al. disclose a single use dispensing sachet (10) comprising a product dispensing end (30) and a filling end opposite the product dispensing end (see figures 8-10), the filling end adapted to be sealed (as seen in figure 15). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kaufmann's invention by replacing the container with a container having a sealed filling end and dispensing end, as taught by O'Reilly et al., to provide a different type of container for dispensing products such as "shampoo, medication, soap, food pastes, sauces, creams and so on." (see col. 1, lines 14-16).

Note: Sealing the filling end by a crimp method subsequent to filling the container with a selected product and securing the crimp edge of the label to the filling end of the container by way of the crimp method do not structurally limit the claim. The patentability of a product does not depend on its method of production. Product-by-Process claims are not limited to the manipulations of recited steps, only the structure implied by the steps. (See MPEP 2113) Furthermore, it is inherently known that the filling end would be sealed after filling the container as it would be quite difficult to fill the container after it has been sealed.

Kaufmann, as modified by O'Reilly, discloses the claimed invention except for securely joining the crimp edge of the label to the filling end of the container. Kaufmann discloses sealing the crimp edge of the label to a side surface located inside of the edges of the container. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position and seal the label at any

desired location on the container, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 2, Kaufmann, as modified by O'Reilly et al., discloses a pliable attachment tongue (5) extending outwardly from the label such that the tongue comprises in part the crimp edge of the label (see figure 5).

8. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann in view of O'Reilly et al. and further in view of Weiss et al. (5,048,711).

Kaufmann, as modified by O'Reilly, discloses the claimed invention except for a tear off portion provided along the crimp edge.

Weiss et al. discloses a container (12) having a label (16) secured thereto. The label comprises a score (22) separating the label into first (24) and second (26) segments. The score facilitates separation of the first and second segments. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Kaufmann's invention to include a tear off portion, as taught by Weiss et al., to enable the label to be released from container without damaging the label.

### ***Conclusion***

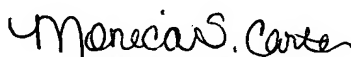
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose labels that are sealed to containers.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica S. Carter whose telephone number is (703) 305-0305. The examiner can normally be reached on Monday-Thursday (8:00 AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (703) 308-2159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

February 6, 2003

  
MONICA CARTER  
PATENT EXAMINER